

Gardner Brothers, Inc. and Ronald Bryant. Case
20-CA-24047

August 31, 1992

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS
DEVANEY AND RAUDABAUGH

Upon a charge filed by Ronald Bryant, an Individual, on June 5, 1991, the General Counsel of the National Labor Relations Board issued a complaint on July 29, 1991, against Gardner Brothers, Inc., the Respondent, alleging that it has violated Section 8(a)(1) and (3) of the National Labor Relations Act. Although properly served copies of the charge and complaint, the Respondent has failed to file an answer.

On August 3, 1992, the General Counsel filed a Motion for Summary Judgment. On August 7, 1992, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. The complaint states that unless an answer is filed within 14 days of service, "all the allegations in the complaint shall be deemed to be admitted to be true and shall be so found by the Board." Further, the undisputed allegations in the Motion for Summary Judgment disclose that the acting Regional attorney, by letter dated June 17, 1992, advised the Respondent that unless an answer was received by June 24, 1992, a Motion for Summary Judgment would be filed.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent, a California corporation, with an office and place of business in San Leandro, California, has been engaged in the building and construction industry as a miscellaneous steel contractor. During the 12-month period ending December 31, 1990, the Respondent, in the course and conduct of its business operations, performed services valued in excess of

\$50,000 for Dillingham Construction, which meets the applicable Board standard for the assertion of jurisdiction on a direct basis. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

District Council of Iron Workers of the State of California and Vicinity (District Council), and Iron Workers Local Union 377, International Association of Bridge, Structural and Ornamental Iron Workers, AFL-CIO (Local 377) are labor organizations within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICE

On or about April 10, 1991, the Respondent laid off and since that date has failed and refused to recall employee Ronald Bryant. The Respondent engaged in the above-described conduct because the employee joined, supported, or assisted a labor organization, and engaged in concerted activities for the purpose of collective bargaining or other mutual aid or protection, and in order to discourage employees from engaging in such activities or other protected concerted activities. We therefore find that the April 10, 1991 layoff of employee Ronald Bryant violated Section 8(a)(3) and (1) of the Act.

CONCLUSIONS OF LAW

1. By laying off employee Ronald Bryant on April 10, 1991, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(3) and (1) and Section 2(6) and (7) of the Act.

2. By laying off and refusing to recall employee Ronald Bryant, the Respondent has discriminated, and is discriminating, in regard to the hire or tenure or terms or conditions of employment of its employees, thereby discouraging membership in a labor organization, and the Respondent thereby has been engaging in unfair labor practices within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

Having found that the Respondent has unlawfully laid off Ronald Bryant, we shall order it to offer him immediate and full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed, and to make him whole for any loss of earnings and other benefits he may have suffered as a result of the Respondent's unlawful conduct. Backpay shall be computed as prescribed in *F. W. Woolworth Co.*, 90 NLRB

289 (1950), with interest to be computed as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

ORDER

The National Labor Relations Board orders that the Respondent, Gardner Brothers, Inc., San Leandro, California, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Laying off employees for engaging in union and other protected concerted activities.

(b) Discriminating in regard to the hire or tenure or terms or conditions of employment of its employees.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Offer employee Ronald Bryant immediate and full reinstatement to his former position or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or other rights or privileges previously enjoyed, and make him whole for any loss of earnings and other benefits he may have suffered, in the manner set forth in the remedy section of this decision.

(b) Remove from the files any reference to the unlawful layoff of Ronald Bryant and notify him in writing that this has been done and that the layoff will not be used against him in any way.

(c) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(d) Post at its facility in San Leandro, California, copies of the attached notice marked "Appendix."¹ Copies of the notice, on forms provided by the Regional Director for Region 20, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt

and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

To organize

To form, join, or assist any union

To bargain collectively through representatives of their own choice

To act together for other mutual aid or protection

To choose not to engage in any of these protected concerted activities.

WE WILL NOT lay off our employees for engaging in union and other protected concerted activities.

WE WILL NOT discriminate in regard to the hire or tenure or terms or conditions of employment of our employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL offer employee Ronald Bryant immediate and full reinstatement to his former position or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or other rights or privileges previously enjoyed, and we will make him whole for any loss of earnings.

WE WILL remove from the files any reference to the unlawful layoff of Ronald Bryant and WE WILL notify him in writing that this has been done and that the layoff will not be used against him in any way.

GARDNER BROTHERS, INC.

¹ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."